

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



In the Matter of:

REDLANDS UNIFIED SCHOOL DISTRICT,

Employer,

and

REDLANDS CLASSIFIED EMPLOYEES
ASSOCIATION, NEA,

Employee Organization,

and

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION AND ITS REDLANDS
CHAPTER 70,

Employee Organization,

PETITIONER

and

REDLANDS TEACHERS ASSOCIATION,
CTA/NEA,

Party of Interest.

Case Nos. LA-R-105
LA-D-88

Request for Reconsideration
or Judicial Review
PERB Decision No. 235

PERB Decision No. 235a

November 15, 1982

Appearances: Robert M. Dohrmann and Henry M. Willis, Attorney
(Schwartz, Steinsapir, Dohrmann, Krepack, Sommers & Edelstein)
for Redlands Classified Employees Association, NEA;
Maureen C. Whelan, Attorney for California School Employees
Association and its Redlands Chapter 70; A. Eugene Huguenin, Jr.,
Attorney for Redlands Teachers Association, CTA/NEA.

Before Tovar, Morgenstern and Jensen, Members.

DECISION

TOVAR, Member: California School Employees Association and its Redlands Chapter 70 (CSEA) requests that the Public Employment Relations Board (PERB or Board) reconsider its decision in Redlands Unified School District (8/27/82) PERB Decision No. 235 or, in the alternative, join in CSEA's request for judicial review of that decision.

In Redlands Unified School District, supra, the Board affirmed the hearing officer's finding that classroom teachers of that school district are not "supervisors" within the meaning of subsection 3540.1(m) of the Educational Employment Relations Act (EERA)¹ and on that basis affirmed the hearing officer's denial of CSEA's motion to dismiss the petition for decertification filed by the Redlands Classified Employees Association, NEA. In the instant request for reconsideration, CSEA contends that in reaching its decision PERB overlooked

¹The Educational Employment Relations Act is codified at Government Code section 3540 et seq. All statutory references are to the Government Code unless otherwise specified.

Subsection 3540.1(m) provides as follows:

(m) "Supervisory employee" means any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend such action, if, in connection with the foregoing, exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgement.

certain indicia of supervisory status present in the record. It asserts that PERB based its determination that teachers are not the supervisors of teachers' aides on the misperception that teachers direct the work activities of aides but otherwise exercise no supervisory function. This contention mischaracterizes the decision of the hearing officer, which was adopted by the Board. The hearing officer acknowledged that the teachers assign and direct the work of aides, have some input into hiring and retention, and otherwise "... exercise some of the enumerated powers [set forth at EERA subsection 3540.1(m)]." (Proposed Decision, p. 10.) Nonetheless, the hearing officer (and, by adoption, the Board) found that such authority was exercised incidentally to the performance of teachers' professional duties, and not as agents of the employer. Thus, as a matter of law, we held teachers not to be supervisors of the aides, based upon our review and endorsement of a well-established line of cases decided by the National Labor Relations Board. See, e.g., Mt. Airy Psychiatric Center (1981) 253 NLRB 1003 [106 LRRM 1071]; Trustees of Noble Hospital (1975) 218 NLRB 1441 [89 LRRM 1806]; Neighborhood Legal Services (1978) 236 NLRB 1269 [98 LRRM 1414]; Redlands Christian Migrant Association (1980) 250 NLRB 134 [104 LRRM 1546].

By its request for reconsideration, CSEA asks the Board to re-examine the above rationale. Such a purpose is not

contemplated by section 32410(a) of PERB's regulations,² which requires that a request for reconsideration be supported by a showing of extraordinary circumstances. We therefore deny CSEA's request for reconsideration.

CSEA contends that, if PERB does not grant the request for reconsideration, PERB should join in CSEA's request for judicial review. As grounds for this request, CSEA asserts that the issue as to whether teachers supervise aides within the meaning of EERA is one of first impression, and thus that judicial interpretation is needed. As the agency charged with bringing specialized expertise to the field of public employment relations, PERB need not defer to the courts each time a new question arises. If such were the case, PERB rulings on representation matters would be merely intermediary hurdles on the road to final resolution. Surely this is not what the

²PERB regulations are codified at California Administrative Code, title 8, section 31000 et seq.

Subsection 32410(a) provides:

(a) Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision with the Board itself within 10 days following the date of service of the decision. The request for reconsideration shall be filed with the Executive Assistant to the Board and shall state with specificity the grounds claimed and, where applicable, shall specify the page of the record relied on. Service and proof of service of the request pursuant to Section 32140 are required.

Legislature had in mind when it created this agency. Further, the fact that the rule established is one of general application does not constitute a special circumstance mandating judicial review. For these reasons, we deny CSEA's alternative request to join in seeking judicial review.

ORDER

For the foregoing reasons, the request of the California School Employees Association and its Redlands Chapter 70 that the Public Employment Relations Board reconsider its Decision in Redlands Unified School District, PERB Decision No. 235 or, in the alternative, join in CSEA's request for judicial review, is DENIED.

Members Morgenstern and Jensen concur.